



## INTERIOR BOARD OF INDIAN APPEALS

Sessions, Inc. v. Richard Amado Miguel

4 IBIA 84 (07/10/1975)

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF

SESSIONS, INC.

(A CALIFORNIA CORPORATION)

v.

RICHARD AMADO MIGUEL (LESSOR)

LEASE NO. PSL-35

IBIA 75-31-A

Decided July 10, 1975

Appeal from an administrative decision cancelling a long-term business lease.

Affirmed.

1. Indian Lands: Leases and Permits: Long-term Business: Rentals--  
Indian Lands: Leases and Permits: Long-term Business: Waiver:  
Generally

Acceptance of rentals by a lessor subsequent to default on specific provisions of the lease by the

lessee does not constitute waiver of items in default in the absence of showing that lessor voluntarily or intentionally waived the requirements under the lease.

2. Indian Lands: Leases and Permits: Long-term Business: Cancellation

A lease may be canceled by the Secretary, at the request of the lessor, where lessee has failed to carry out specific provisions of the lease.

APPEARANCES: Dillon, Boyd, Dougherty and Perrier, a Professional Corporation, for appellant, Sessions, Inc., a California Corporation; William M. Wirtz, staff attorney, Sacramento Regional Solicitor's Office for Richard Amado Miguel, appellee.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this Board on an appeal timely filed by Sessions, Inc., hereinafter referred to as appellant, from a decision of the Area Director, Sacramento Area Office, Bureau of Indian Affairs, canceling a business lease.

The appeal involves cancellation of Lease No. PSL-35, Contract No. 14-20-0550-804, hereinafter referred to as lease, on trust allotted lands acquired by appellant's predecessor in interest, Rancho Trailer Park, Inc., on April 11, 1960, from the Indian owner, Richard Amado Miguel, hereinafter referred to as appellee.

The lease covers a five-acre tract described as S 1/2 NE 1/4, NE 1/4, SE 1/4, section 22, T. 4 S., R. 4 E., San Bernardino Base Meridian, Riverside County, California, being a portion of the trust allotment of the appellee, PS-8.

This lease, being one of seven leases approved on January 27, 1961, by the Secretary of the Interior to the appellant's predecessor in interest, can be characterized as a unitized lease since all seven leases contain identical covenants and differ only as to the rent, description of the land, lessors, and the cost of improvements for each individual parcel of land.

According to the record, the Area Director on July 30, 1974, gave the appellant 60 days in which to cure the default in performance of Articles 7, 8 and 11 of the lease. The appellant failed to cure said defaults and on October 15, 1974, the appellant was notified of the cancellation of the lease effective as of that date for the following reasons:

Failure to complete construction of three hundred thousand dollars (\$300,000) worth of improvements on the leased premises and failure to submit a general plan and architect's design for development of said premises.

The Articles of the lease in dispute, 7, 8 and 11, in pertinent part provide:

7. IMPROVEMENTS

As a material part of the consideration for this lease, the lessee covenants and agrees no less than five (5) years after the beginning date of the term of this lease, lessee will have completed construction of permanent improvements on the leased premises at a cost of and having a reasonable value of THREE HUNDRED THOUSAND DOLLARS (\$300,000)

8. GENERAL PLAN AND DESIGN

Within two (2) years after the approval of this lease, the lessee shall cause to be prepared and submitted to the Secretary for approval, a general plan and architect's design for the full improvement and complete development of the entire leased premises. The Secretary shall not unreasonably withhold approval and shall

either approve or state his reasons for disapproval within thirty (30) days after said plans are presented to him by the lessee.

#### 11. COMPLETION OF IMPROVEMENT

It is understood and agreed that the lessee will complete the full improvement and development of the leased premises in accordance with the general plan and architect's design, submitted in accordance with Article 8, above, within five (5) years from the beginning date of the term of the lease.

The appellant from the said cancellation filed a timely appeal to the Commissioner, Bureau of Indian Affairs who in turn on December 4, 1974, referred the matter to this Board for disposition. In support of the appeal the appellant contends as follows:

1. Sessions Inc. submitted plans and designs for the improvement of the leased premises that have neither been approved nor disapproved by the Secretary and his subordinates.

2. Sessions' obligation to redevelop Lease PSL-35 is excused by the refusal of one or more of the Indian Lessors to approve plans and designs for the redevelopment [sic] of Rancho Trailer Park and grant the dedications of city streets required for the development.

3. The Secretary and the Lessor, by having accepted the rent called for under Lease No. PSL-35, have waived Sessions' obligations under the lease to complete the development of the leased premises.

4. It would be an unjust result to forfeit lease PSL-35.

In brief, the lease in question required the appellant to fully develop and improve within five years from January 27, 1961, the leased premises which were then used as a trailer park. To this end, the lease terms provided that appellant was to submit within two years from January 27, 1961, to the Bureau of Indian Affairs as representative of the Secretary of the Interior, for approval, a general plan and architect's design for permanent improvements. The plan, if approved, required construction of improvements to be completed by January 26, 1966.

Considering the Bureau of Indian Affairs' reasons for canceling the lease and appellant's contention opposing the cancellation, it is quite apparent that nonperformance of Articles 7, 8 and 11 is claimed by the appellee while appellant claims waiver of performance.

It is the contention of appellant that it is not in default of its obligations under Article 8 because the Secretary and his subordinates did not take any action on the alleged plans submitted by appellant to the Bureau of Indian Affairs and appellee as required by Article 8 of the lease. The appellant, accordingly, attributes its noncompliance under Article 11 of the lease on the Secretary's failure to act on the alleged plans submitted on March 20, 1966.

The alleged plans, among other things, required that the appellee dedicate part of his land to the city of Palm Springs for widening and extending a certain street through the middle of the leased premises.

The Board finds nothing in the lease requiring dedication as a requirement of the development of the property. Since the dedication would require a substantial amendment to the lease, the Bureau of Indian Affairs was not required to approve or disapprove the alleged plan since it was not one to commercially develop the property within the terms of the lease. Refusal by the appellee to dedicate his land can hardly be labeled as arbitrary or unreasonable in view of the fact that dedication could possibly destroy for all time the future use of the property for commercial purposes.

Moreover, in the absence of an approved extension, although requests had been made, of the period for submission of the plan and architect's design under Article 8 of the lease, the Board finds that appellant was in default thereof as of January 26, 1963.

Additionally, in the absence of an approved extension and the failure of appellant to complete the improvements under Articles 7 and 11 by January 26, 1966, the Board further finds that appellant was in default as to these Articles.



Appellant's contention that performance of the obligation imposed by Articles 7, 8 and 11 was waived by appellee's continued acceptance of the rentals without requiring performance of the obligations or instituting actions determining the lease is unacceptable.

[1] The Board in the Administrative Appeal of Sessions, Inc. v. Vyola Olinger Ortner, et al., 3 IBIA 145, 81 I.D. 651 held that acceptance of rentals by the lessor subsequent to default on specific provisions of the lease by the lessee does not constitute waiver of items in default in the absence of showing that lessor voluntarily or intentionally waived the requirements under the lease. The Board in support of its position cited the cases of Sessions, Inc. v. Morton, et al., 348 F. Supp. 694 (C.D. Cal. 1972), affirmed in Sessions, Inc. v. Morton, et al., 491 F.2d 854 (9th Cir. 1974). The court in the foregoing cases under very similar and like circumstances as in the case at bar found that acceptance of rentals by the lessor did not effect or constitute waiver of default. The lease under consideration by the court, like the lease on appeal herein, was one of the original group of seven Indian leases on the Palm Springs Indian reservation.

[2] Moreover, the Board in the above-cited Administrative Appeal of Sessions, Inc., supra, held that a lease may be canceled by the Secretary at the request of the lessor where lessee has failed to carry out specific provisions of the lease.

In view of the reasons hereinabove stated, the Board finds the Area Director's decision of October 15, 1974, canceling appellant's lease was fully justified and his decision should be affirmed.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), as amended June 12, 1975, the decision of the Area Director dated October 15, 1974, canceling Lease PSL-35, Contract No. 14-20-0550-804, be, and the same is hereby AFFIRMED.

This decision is final for the Department.

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//original signed  
Alexander H. Wilson  
Administrative Judge

I concur:

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//original signed  
Mitchell J. Sabagh  
Administrative Judge